

## **BOARD OF ZONING APPEALS**

**August 23, 2021**

### **MEETING**

#### **ROLL CALL**

The meeting was called to order at 7:50 p.m. and the assemblage was invited to stand and recite the Pledge of Allegiance.

#### **Members Present:**

Chairman Nick Nochevich, John Marshall, Dick Sauerman, Daniel Rohaley

**Members Absent:** Vice Chairman Jeremy Taylor

#### **Staff Present:**

Executive Secretary Anthony Schlueter, Assistant Planner Grace Roman

#### **APPROVAL OF MINUTES**

Chairman Nick Nochevich asked if there are any corrections, deletions, or modifications to the July 26, 2021 meeting minutes. Daniel Rohaley stated Attorney Wieser's name is spelled wrong throughout the minutes. Nochevich stated a minor change in the approval of minutes for last month. Dick Sauerman motioned to approve minutes with corrections. Daniel Rohaley seconded the motion. With 4 Ayes, 0 Nays, and 0 Abstentions, the minutes were approved.

#### **OLD BUSINESS**

None

#### **NEW BUSINESS**

##### **21-18 Smalltown Coffee Co., Petitioner/Chubbs, Harold J Trs., Owner**

**Request:** Variance of Use

**Purpose:** Allow for expansion of restaurant use (outdoor seating) in an R-3 District

**Location:** 302 E. Goldsborough Street

Annette McKeon, 306 1/2 E. Goldsborough St., came before the Board and provided an overview of the petition. McKeon stated this was talked about early on and now with covid and the desire for more people to sit outdoors they are looking to purchase a small piece of the neighbor's property to expand their outdoor seating.

Executive Secretary Anthony Schlueter reported on the location, history of approvals and surrounding properties. Schlueter reported on the parking. Schlueter reported that since the approval of the original petition the city has done several improvements to this area including roadway expansion with new curbs and sidewalks, additional on street parking improvements and recommended approval of the expansion.

John Marshall stated he is excited to see the expansion because it means the business is successful.

Dick Sauerman agreed with Marshall. Sauerman asked if the lot is a subdivided lot being purchased from Chubbs. McKeown stated she does not know what subdivided means. Schlueter stated he believes it is a metes and bounds.

Rohaley asked if there will be a landscape buffer to the west to screen the noise from the residential area. McKeown stated it has been discussed but has not finalized anything. Rohaley stated there should be screening there and asked McKeown if she would be ok with screening as a reasonable condition. McKeown stated she wouldn't have an issue with that.

Marshall asked McKeon if they have any plans for an evening agenda. McKeown stated it has been discussed. Marshall asked if they could make it part of the motion that if they start to have evening hours it would need to be brought back to the Board. Rohaley stated if they put a row of arbor vitae along the west side they should be ok. Schlueter asked McKeown if they received a complaint to install additional screening to deaden the noise.

Nochevich opened the public portion of the meeting. With no public coming forward, Nochevich closed the public portion of the meeting.

Nochevich entertained a motion. Marshall motioned to approve Petition #21-18 with all Staff comments, finding of facts and screening along the west side of the property. McKeown asked if the screening would be subject to the hours. Marshall stated he feels it should be screened regardless. Rohaley agreed. Rohaley seconded the motion. With a roll call vote of 4 Ayes, 0 Nays, and 0 Abstentions Petition #21-18 was approved.

**21-19 View Outdoor Advertising, LLC, Petitioner/Franciscan Alliance, Inc., Owner**

**Request:** Variance of Use

**Purpose:** Allow a billboard in an OS-1 Service District

**Location:** 12800 Mississippi Parkway

Jeff Ban, of DVG 1155 Troutwine Rd., came before the Board and asked them to hear Petitions #21-19 & #21-20 together and then make separate motions on the petitions. Nochevich stated he did not see any issues with that. Ban introduced Matt Felder with View Outdoor Advertising and Bob Corbin, General Counsel to Franciscan Alliance 1515 West Dragoon Trail Mishawaka, IN 46544, General Counsel for Franciscan Alliance. Ban provided an overview of both petitions. Ban provided renderings of the existing signs and the proposed location for the future signs. Ban stated the existing sign is in the way of the helipad as well. Ban listed all the issues with the current location of the existing billboard.

Schlueter reported on the location and previous approvals for the site. Schlueter reported on the existing billboard and the proposed new location for the billboard. Schlueter reported he does not see any issues with the new location of the billboard and recommended a favorable recommendation to the City Council.

Rohaley stated he can see the hardship for the OS-1 district but voiced his concern with setting a precedence for reducing the spacing of the billboards. Rohaley asked Ban what the distance for the 2 billboards would be. Ban stated it would be 645'. Rohaley asked Ban to verify 1250' is required. Ban confirmed. Ban stated it is expected that billboard 2 would eventually be eliminated due to the 129<sup>th</sup> Ave. overpass. Rohaley asked if they couldn't just go ahead and move billboard 2 5-600' to the south so the variance wouldn't be required. Ban asked for clarification. Rohaley stated they could move both billboards so the proper spacing would be there. Bob Corbin explained why he thought it would be problematic to do that. Rohaley voiced his concern with setting a precedence but thinks maybe there are extenuating circumstances that justify it.

Sauerman stated he is not making a decision based on the possibility of an overpass. Sauerman asked if they are going to be ok if billboard 2 stays where it is. Sauerman stated he feels the helipad supersedes the spacing distance between the 2 billboards but wanted to ask the question.

Marshall agreed with Sauerman. Marshall stated he thinks he can see the hardship.

Nochevich asked Attorney Irak about putting a condition on any approval that if the 2<sup>nd</sup> sign does not come down and causes an issue, can possibly look at replacing or removing it. Irak stated the problem is they have contractual agreements between parties that are not present at the meeting. Irak recommended basing their decisions off the safety issues that were discussed and not off whether the 2<sup>nd</sup> billboard will still be there or not. Sauerman, the Board and Irak discussed the options. Rohaley asked if anyone has approached St Francis to see if they will allow the billboard to be on their real estate. Ban stated no one has but said the current owner of the billboard is unrelated to St Francis and unrelated to Franciscan Alliance with an existing lease. Schlueter stated they would have to get permission to break the current contract with the current owner. Ban stated it would not be unreasonable for Franciscan Alliance to work with View Outdoor Advertising to relocate that billboard once the lease expires. Rohaley asked if it was possible to make the approval on this subject to the expiration of the existing lease on billboard 2. Ban stated he does not think the property to the south has the proper zoning to permit a billboard but will defer to the attorneys. Rohaley stated then the hardship would be the health, safety & general welfare due to billboard location causing an issue for the helipad.

Sauerman asked what the lease provision for the hospital billboard is. Felder detailed the agreement which has about 5 years left.

Nochevich opened the public portion of the meeting. With no public coming forward, Nochevich closed the public portion of the meeting.

Nochevich entertained a motion. Rohaley motioned to send a favorable recommendation to the City Council for Petition #21-19 with all Staff comments. Sauerman seconded the motion. With a roll call vote of 4 Ayes, 0 Nays, and 0 Abstentions Petition #21-19 received a favorable recommendation.

**21-20 View Outdoor Advertising, LLC, Petitioner/Franciscan Alliance, Inc., Owner**

**Request:** Variance from Development Standards

**Purpose:** Allow a billboard to be located within the minimum spacing requirements of another billboard in an OS-1 District

**Location:** 12800 Mississippi Parkway

Nochevich asked the Board if they have any additional questions for this petition.

Nochevich opened the public portion of the meeting. With no public coming forward, Nochevich closed the public portion of the meeting.

Nochevich entertained a motion. Rohaley motioned to send a favorable recommendation to the City Council for Petition #21-20 with all Staff comments. Sauerman seconded the motion. With a roll call vote of 4 Ayes, 0 Nays, and 0 Abstentions Petition #21-20 received a favorable recommendation.

**MISCELLANEOUS AND PUBLIC COMMENT**

No Public.

No Misc.

**ADJOURNMENT**

At 8:44 pm, Nochevich entertained a motion to adjourn. Marshall motioned to adjourn; motion was seconded by Sauerman.

**ATTESTMENT OF MEETING MINUTES.**

The above minutes were approved and adopted by majority on the 27th day of September 2021.

  
\_\_\_\_\_  
Nick Nochevich, Chairman  
\_\_\_\_\_  
Anthony Schlueter, Executive Secretary